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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,491	11/25/2003	Timothy P. Mate	341148004US1	6043
25096	7590	05/04/2007		
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			EXAMINER ROZANSKI, MICHAEL T	
			ART UNIT 3768	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/721,491

Applicant(s)

MATE ET AL.

Examiner

Michael Rozanski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-130 is/are pending in the application.
- 4a) Of the above claim(s) 1-118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 119-130 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/9/04, 5/14/04.
- ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: 4/30/07.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. During a telephone conversation with Susan Betcher on April 23, 2007 it was noted that claims 99-106 were not included in the Election/Restriction of January 29, 2007. It was agreed that claims 99-106, drawn to a method for treating a treatment target of a patient, would be included in Group I of the Election/Restriction, which was not elected. Group II was elected without traverse and includes claims 119-130, the Office Action to which follows.

### ***Double Patenting***

2. Claims 119-130 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 98-107 of copending Application No. 10/722,015 and over claims 144-150 over copending Application No. 10/743,531. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending applications '015 and '531 includes a radiation therapy system for treating a target of a patient using a wireless marker implanted in the patient at a site relative to the target with a detector that obtains position data of the marker and a computer coupled to the detector having an operable medium. In addition, the delivery device is configured to automatically move a patient support table according to the offset coordinate.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 119-130 are rejected under 35 U.S.C. 102(e) as being anticipated by ***Cosman*** (US 6,405,072).

***Claims 119-130:*** Cosman discloses a radiation delivery system having a radiation source 16, a patient support F, and drive system 10 (col. 4, lines 1-20). In addition, wireless markers 20, 21, 23, and 24 may be implanted in a patient are excitable by the source and are detected by a plurality of sensors 17-19 (col. 4, lines 13-39). The data processor 34 receives information 12 or more times/minute from the sensors related to the actual position of the marker, determines the actual location of the treatment target based on the position information of the marker, computes a displacement between the target and beam isocenter in three dimensions in real-time (i.e. at least every 5 seconds) provided to an operator, control system, and/or radiation delivery device based on the position of the treatment target, and automatically controls the radiation beam and/or moves the patient support based on the computed

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displacement between the target and beam isocenter (col. 4, lines 48-61; col. 5, lines 8-45; col. 7, lines 1-11).

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Rozanski whose telephone number is 571-272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*MR*  
MR

  
ELENI MANTIS MERCADER  
SUPERVISORY PATENT EXAMINER